

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4522 of 2018

Arising Out of PS. Case No.-84 Year-2005 Thana- BARHARA KOTHI District- Purnia

1. JAGDISH MEHTA S/O LATE DHAYNI MEHTA R/O VILLAGE-PATRAHA, PS- BARHARA, DISTT.- PURNEA.
2. MANOJ MEHTA S/O JAGDISH MEHTA R/O VILLAGE- PATRAHA, PS- BARHARA, DISTT.- PURNEA.
3. PINTU @ SAROJ MEHTA S/O JAGDISH MEHTA R/O VILLAGE-PATRAHA, PS- BARHARA, DISTT.- PURNEA.

... .. Appellant/s

Versus

THE STATE OF BIHAR

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Amarnath Jha, Advocate
For the Respondent/s : Mr. A.M.P. Mehta, APP

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT

Date : 15-01-2024

1. Learned counsel Mr. Amarnath Jha, appearing for the appellants and learned APP Mr. A.M.P. Mehta, for the State are present and they are heard on the merit of this appeal.

2. The present appeal has been filed against the judgment of conviction dated 29.10.2018 and order of sentence dated 31.10.2018 passed by the Court of learned Presiding Officer, Fast Track Court-1, Purnea, in connection with Sessions Trial Case No. 633 of 2006, CIS No. 3612/13, T.R. No. 23/17 arising out of Barhara P.S. Case No. 84 of 2005, whereby and whereunder the appellant No.1 has been convicted and sentenced for the offence punishable under Section 395 read



with Section 120B of the Indian Penal Code (hereinafter referred to as “IPC”) and the appellant No. 2 and 3 have been convicted for the offences punishable under Sections 395, 397 and 120B of IPC and sentenced for the said offences.

3. The prosecution’s case in brief is that:-

In the midnight of 30.09.2005, it was noticed by the informant that one person had jumped into the courtyard of his house and thereafter, the said person asked his old mother to hand over the key of the main gate and at that time the said person convinced his mother that all the other persons who also stood there, were their known and then, his mother handed over the key to the said person and thereafter, the main gate was opened by the accused and about eight to nine miscreants who were carrying various types of weapons in their hands, entered into the courtyard of his house and at that time he identified the appellant Jagdish Mehta and his two sons namely, Manoj Mehta and Pintu @ Saroj Mehta in the light of a bulb and he saw the appellants from the window of his room and he got himself hidden beneath his *Chawki* inside his room. The informant further alleged that at the beginning of occurrence the appellant Jagdish Mehta firstly, asked his sons to stop the electricity by removing the main fuse and also asked them to remove the wire



of telephone and then his sons followed his instruction and thereafter, the appellant Jagdish Mehta asked his sons to complete their work immediately. The informant further alleged that during the course of occurrence the appellant Manoj Mehta firstly, inquired from his mother about the presence of his brother Anil Kumar Mehta but his mother did not say anything, then, the appellants entered into the room of his brother Anil Kumar Mehta and thereafter, he heard the sound of two firings and after that, at the direction of the appellant Jagdish Mehta, his sons and other miscreants opened the *almirahs* and suitcases and looted ornaments, clothes and important documents from the house of the informant and at that time the other miscreants were using local dialect and after that, he went into the room of his brother and found him lying in unconscious condition in a pool of blood and there were bleeding injuries at his jaw, wrist of his right hand and chest and then he rushed outside in crying condition and went to his father and untied his hands as the accused had tied his father's hands and by that time their neighbours gathered at the place of occurrence and then his brother was rushed to Sadar Hospital, Purnea, from where he was referred to Patna Medical College and Hospital for better treatment but during that course his brother was also treated at



Koshi Nursing Home, Purnea.

4. The informant recorded his *fardbeyan* exhibit 4 with the above allegations, on that basis, **formal FIR bearing Barhara P.S. Case No. 84 of 2005** was registered for the offences punishable under Sections 395 and 397 of IPC and under Section 27 of the Arms Act, which set the criminal law in motion.

5. After the completion of investigation, police submitted the chargesheet against the appellants for the offences punishable under Sections 395, 397 and 120B of IPC and during the course of investigation, the police failed to trace out and identify the other accused persons who were detailed in the FIR. The concerned Judicial Magistrate committed the case of the appellants to the Sessions Court after taking cognizance of the alleged offences.

6. The appellants stood charged for the offences punishable under Sections 395, 397 and 120B of IPC.

7. During trial, the prosecution examined the following
Nine witnesses:-

P.W.1:- Anil Kumar Mehta (Victim)

P.W.2:- Md. Mansur

P.W.3:- Shashi Devi



P.W.4:- Bhakti Sharan Mehta

P.W.5:- Arun Kumar Mehta (Informant)

P.W.6:- Dr. M.K. Singh

P.W.7:- Dr. B.K. Gopalika

P.W.8:- Rajesh Kumar(The then Judicial Magistrate)

P.W.9:- Sahid Alam (Investigating Officer)

8. In documentary evidence, prosecution produced the following documents and got them marked as exhibits which are as under:-

Ext.1- Signature of P.W.1 on his statement recorded under Section 164 of Cr.P.C;

Ext.2- Signature of P.W.3 on her statement recorded under Section 164 of Cr.P.C;

Ext.3- Writing and signature of one in connection with S.D. Entry no. 459 dated 31.07.2003;

Ext.4- Signature of the Informant on his *fardbeyan*;

Ext.5- Prescription- cum- injury report prepared by Dr. M.K. Singh of Koshi Nursing Home;

Ext.5/1- X-ray report;

Ext.5/2- Prescription of Mukhopadhyaya Orthopaedic Clinic and Research Centre;

Ext.6- An injury report of Sadar Hospital, Purnea;



Ext.7- Statement of Anil Kumar Mehta recorded under
Section 164 of Cr.P.C;

Ext.7/1- Statement of Shashi Devi recorded under
Section 164 of Cr.P.C;

9. After the completion of prosecution's evidence the statements of the appellants were recorded in which they denied the circumstances appearing against them from the prosecution's evidences and claimed themselves to be innocent but they did not make any specific defence in their statements.

10. In defence evidence the appellants examined one person namely, Md. Ibrahim as defence witness D.W.1 and in documentary evidence produced the following documents and got them marked as exhibits which are as under:-

Ext.A- Certified Copy of Barhara P.S. Case No. 147
of 2007,

Ext.B- Original Sale Deed No. 5050 dated. 31.05.1993,

Ext.B/1- Certified Copy of Sale Deed No. 159/1998,

Ext.C- Certified Copy of Judgment in Sessions Trial
No. 235 of 2006.

Ext.A/1- A requisition of K.Hat Police sent to Sadar
Hospital, Purnea.

After taking the evidences of both the sides and



hearing the prosecution and the accused persons, the trial court convicted the appellants for the offences for which they were charged and sentenced the appellants to undergo Rigorous Imprisonment for ten years each with a fine of Rs. 10,000/- each for the offence punishable under Section 395 of IPC read with Section 120B of IPC and in default of the payment of fine the appellants were directed to further undergo imprisonment for two months each. The trial court further sentenced the appellants Manoj Mehta and Pintu @ Saroj Mehta to undergo rigorous imprisonment for seven years for the offence punishable under Section 397 of IPC. Both the sentences of imprisonment were directed to run concurrently.

11. It has been argued by learned counsel for the appellants that enmity in between the appellants and prosecution party is an admitted position and the alleged offence of *dacoity* is not made out against the appellants as the prosecution failed to give the details of other miscreants who were alleged to be present at the place of occurrence with the convicts as their companions and during investigation, the police also did not find any details of the said miscreants, which falsifies the factum of five or more than five persons being involved in the commission of the alleged occurrence as alleged in the FIR, in



fact the injured Anil Kumar Mehta was running a Gunda Bank and he had grabbed money of several co-villagers regarding which cases had been lodged against him and there were several enemies of him, anyone of them might have targeted him and caused gunshot injury to him and in this regard the evidence of D.W.1 was given but the same was not properly appreciated by the trial court. It has been further argued that the injured Anil Mehta had filed Barhara P.S. Case No. 160 of 2004 under Section 307/34 of IPC against the appellants Jagdish Mehta, Manoj Mehta and others but all the accused persons of that case were acquitted by the concerned trial court and the said fact is sufficient to rise the inference that the informant and his family members were in habit of lodging false cases against the appellants. It has been further submitted that the informant and the appellants are relatives, in between them there is a land dispute since 1993 and the informant and his family members tried to grab the land of the appellants, therefore all the male members of the appellants' family have been made accused in this Case and during trial, only one independent person was examined as P.W.2 namely, Md. Mansur but he deposed before the trial court that he had not identified the accused persons and he simply stated that he saw them in torch light and the first



main Investigating Officer was not examined before the trial court which prejudiced the appellants' right to elicit the real facts by cross-examining the said I.O. It has been further submitted that the appellant No.1 is 75 years old.

12. Learned APP has vehemently opposed the appeal and submitted that the appellants were rightly convicted by the trial court as they were identified by the informant and his family members at the time of commission of the offence of *dacoity* and before the trial court all the material witnesses who are stated to be eye-witnesses remained firm to their stand and the firearm injuries found on the person of the informant's brother are also sufficient to prove the commission of the alleged occurrence of *dacoity* and enmity in between both the parties is an admitted position which was the main reason for the appellants to commit the alleged occurrence with the help of other miscreants in order to take revenge from the informant's family and there is no force in this appeal and it is liable to be dismissed.

13. Heard both the sides and perused the impugned judgment and evidences available on the case record of trial Court and also gone through the statements of the accused persons/appellants.



14. Admittedly, there was enmity in between the appellants and prosecution party. Now it is to be decided whether the conclusion of the trial Court holding the appellants guilty of the offences charged is proper and legal or not. As per FIR, the alleged occurrence took place at about midnight and the same was committed by 8 to 9 miscreants including the appellants. The informant stated in his *fardbeyan* that when he was sleeping in his room, then one person jumped into the courtyard of his house who asked the mother of the informant to give him the key and when informant's mother asked him to give the details of the persons who had entered then the accused persons told her that all of them were her own persons and thereafter, the accused persons took the key from the informant's mother. In this way the accused persons took the key of the house of the informant from informant's mother at the initial stage of the occurrence but the informant deposed in his examination-in-chief that he woke up when the miscreants demanded key from him. The said statement is completely contradictory to the statement made by the informant in his *fardbeyan* which is basis of the prosecution's case.

15. Here it is important to mention that the informant's mother was a material witness but the prosecution



did not produce her as a witness in the chargesheet and during trial, the prosecution did not take any attempt to examine her. The informant alleged in his *fardbeyan* that at the initial stage of the occurrence and before committing the offence of *dacoity*, the fuse of electric supply to the house of the informant was removed by the appellant Manoj Mehta and Pintu @ Saroj Mehta in following with the direction given by the appellant Jagdish Mehta and thereafter, the appellants and other miscreants entered into the room of the victim Anil Kumar Mehta and thereafter, sound of two firings was heard by the informant. In the light of this allegation, one thing is quite clear that the accused persons(appellants) had firstly disconnected the supply of electricity to the house of the informant before committing the occurrence of *dacoity* and causing firearm injury to the victim, so in such a situation the prosecution was bound to prove the source by which the victim and other material witnesses identified the accused persons at the time of commission of the alleged occurrence of *dacoity* and firing. But in this regard the prosecution took a different plea that the victim Anil Kumar Mehta (P.W.1) and his wife Shashi Devi who was alongwith her husband in his room at the time of commission of the alleged occurrence, easily identified the



appellants as there was light in their room on account of supply of electricity in a bulb which was already switched on at that time. In this regard P.W.1 deposed in the examination-in-chief that there was light of a bulb in the *verandah* (Porch) as well as in his room. The witness did not say anything about the act of the accused persons as to removing the fuse of the electric supply to the house of informant as alleged in the FIR.

16. P.W.3. also deposed in the examination-in-chief that the occurrence took place at about midnight and at that time there was light in her husband's room and as per the evidence of this witness, the appellants were identified by her and her husband in the light of a bulb which was burning in their room. Accordingly, the evidence of this witness regarding the source which has been claimed by the material witnesses of the prosecution in identifying the appellants is completely contradictory to the facts of FIR which creates a serious doubt in the prosecution's story.

17. The informant alleged in his *fardbeyan* that the number of the accused persons was 8 to 9 and according to him the offence of *dacoity* was committed by the said persons. Whereas P.W.1. deposed that he saw the appellants and two or three persons who were with them at the relevant time of the



occurrence. According to this witness, the alleged occurrence was committed by five to six persons.

P.W.4. who is father of the victim Anil Kumar Mehta deposed that he saw the appellants and seven to eight other persons with them. Accordingly, regarding the number of accused persons there is serious contradiction in between the prosecution story described by the informant in his *fardbeyan* and the evidence given by the material witnesses and it also creates a serious doubt in the prosecution's allegation concerned to the appellants.

18. According to prosecution's story, the informant was sleeping in other room of the same house and he claimed to have woken up when the accused persons entered into his house and he stated in his *fardbeyan* that he heard the sound of two gunshot firing coming from the room of the victim Anil Kumar Mehta. According to this statement the accused persons used their firearms two times in causing firearm injuries to the victim but as per P.W.4., the sound of three gunshot firings was heard by him. In this way, regarding the number of gunshot firings, the said witnesses made contradictory statement that goes against the prosecution. In respect of the allegation as to causing firearm injuries to the victim Anil Kumar Mehta by the



appellants, the evidence of the victim and his wife is very relevant and important as both are said to be eyewitnesses of the said occurrence. P.W.1, victim of firing, deposed in the examination-in-chief that the first gunshot firing was made by the appellant Manoj Mehta at the direction of appellant Jagdish Mehta and he sustained firearm injury in his head in that first firing and thereafter, the appellant Pintu @ Saroj Mehta fired at him that caused injuries at his right hand and chest. In this way according to the evidence of this witness the appellant Manoj Mehta fired one gunshot and the appellant Pintu @ Saroj Mehta also fired one gunshot but according to P.W.3. Shashi, Devi who happens to be wife of the victim Anil Kumar Mehta two firings were made only by the appellant Manoj Mehta who was carrying a pistol among the accused persons and he used the said firearm for two times at the direction of the appellant Jagdish Mehta at her husband and caused firearm injuries at her husband's Jaw and Chest. In this way the evidence of P.W.3. is completely contradictory to the evidence of her husband P.W.1 who is said to be the victim of the firing, regarding the type of firearm and the number of firings as well as about the accused who allegedly used the firearm and this creates a serious doubt in the prosecution's allegation concerned to the appellants.



19. P.W.4. deposed that his co-villagers gathered and then the accused fled away and he further deposed in the cross-examination that his hands and legs were untied by the villagers. The witness gave the details of the names of the said co-villagers in the cross-examination, out of them only one person namely, Md. Mansur was examined as P.W.2.

P.W.2. deposed in the examination-in-chief that he came out of his house on hearing the sound of firings and started rushing towards the house of victim Anil Babu and on the way he saw the accused persons in the light of his torch but he did not identify any of them. Admittedly, the appellants are known to the said witness as they are residents of the same village and the witness claimed to have seen the accused persons in fleeing position from the victim's house in the light of a torch but he did not reveal the names of the appellants. If the appellants remained involved in the alleged occurrence of *dacoity* then any of them would have been identified by the said witness as he claimed to have seen the accused persons in the light of torch. Hence, the said circumstance goes against the prosecution's allegation.

20. The present matter relates to the offence of *dacoity* and the main investigating officer was not produced and



examined by the prosecution and it is an admitted position that the police failed to recover any part of the looted articles from the house or possession of the appellants despite a direct allegation having been made against the appellants by the victim and the appellants are said to be co-villagers of the victims. If any serious attempt was made by the investigating officer then definitely looted articles or any part of it might have been recovered if the alleged occurrence of *dacoity* was committed by the appellants and furthermore regarding the alleged place of occurrence and sign of the commission of *dacoity* and regarding the act of using firearms at the alleged place and availability of blood stains at the place of occurrence the defence of the appellants can be deemed to have been seriously, prejudiced on account of non-examination of the main investigating officer which goes against the prosecution.

21. In the present matter it is an admitted position that there was enmity in between the appellants and victim's family and there was also criminal litigation running in between them prior to the commission of the alleged occurrence. No doubt an enmity may be a reason to commit an offence like the crime of present matter with revengeful attitude but on the other hand such enmity may also be a reason on the part of one party



to falsely implicate the opposite party in a crime which has taken place and committed by unknown or some others.

22. Though in the present matter the prosecution succeeded to prove the commission of an occurrence by some miscreants in which they caused firearm injury to the victim Anil Kumar Mehta but in the light of the contradictions appearing from the evidence of prosecution witnesses as discussed above, it does not seem believable that an occurrence of *dacoity* took place in the house of the informant and the same was committed by the appellants and this Court is of the view that the appellants are entitled to get a benefit of doubt and the appreciation of the evidences of the prosecution made by the trial Court does not appear to be proper and this Court finds sufficient reasons to interfere in the conclusion of the trial Court. Accordingly, the judgment and order impugned convicting and sentencing the appellants for the offences charged are hereby set aside.

23. In the result, the present appeal stands allowed and the appellants are acquitted of the offences charged.

24. The appellant No.1 namely, Jagdish Mehta is on bail, hence his bail bond stands cancelled and he is discharged from the liability arising out of his bail bond. Appellant No. 2



namely, Manoj Mehta and appellant No. 3 namely, Pintu @ Saroj Mehta are in judicial custody hence, they are directed to be released forthwith, if their custody is not required in any other matter.

25. Let a copy of this judgment be sent to the trial Court and Jail authority concerned for immediate compliance and needful.

26. Let the LCR be sent back to the concerned Trial Court.

(Shailendra Singh, J)

Maynaz/-

AFR/NAFR	AFR
CAV DATE	NA
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